

**A.F.R**

**HIGH COURT OF MADHYA PRADESH, JABALPUR**

**M.Cr.C. No.8628/2016**

Kavita Tiwari

Vs.

Meera Tiwari and another

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Present : Hon'ble Shri Justice S.K. Gangele  
Hon'ble Shri Justice Anurag Shrivastava  
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Shri Anoop Kumar Shukla, Advocate for the applicant.  
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Whether approved for reporting: Yes/No

**ORDER**  
**( 03.04.2017)**

The complainant has preferred this petition under Section 378 (3) Cr.P.C for grant of leave to file an appeal against the acquittal of the respondent No.1 from the offence punishable under Section 376 read with 109 of IPC. vide impugned judgment dated 18.03.2016 recorded in ST No.269/2011 by the VI Additional Sessions Judge, Rewa (M.P.)

**2.** The respondent Smt. Meera Tiwari was prosecuted alongwith her son Rohit for offence punishable under Section 376 read with 109 of IPC for abetting her son to commit rape on prosecutrix who is a minor girl. It is alleged that the prosecutrix is real niece of the respondent who is living in her neighborhood. On 25.06.2011 the prosecutrix has lodged a

report Ex-P/3 in City Kotwali, Rewa stating that she is a minor girl aged about 13 years. Sometime back on 15.11.2010 in the evening about 5 O' clock her aunty, respondent Meera Tiwari called the prosecutrix in her house and asked to prepare tea. When prosecutrix was preparing tea accused Rohit came there and committed forcibly intercourse with her. During this the respondent closed the door of the room from outside. After the incident Rohit and respondent threatened her to kill if she would tell anybody about the incident. Thereafter for eight-ten occasions respondent called the prosecutrix in her house on false pretext and the accused Rohit committed rape on her. On 25.5.2011 when Rohit was making sexual intercourse with her, the sister-in-law of prosecutrix saw them and informed the mother of the prosecutrix. Thereafter prosecutrix had told her parents about the incident and subsequently a report was lodged in Police Station City Kotwali Rewa.

**3.** A FIR was recorded and offence under Section 376 and 376 r/w 109 of IPC was registered and after usual investigation charge sheet has been filed against Rohit and present respondent Meera Tiwari. The trial Court framed charge of aforesaid offence against the accused persons, they abjured guilt. After conclusion of trial the trial Court

while passing impugned judgment dated 18.03.2016 convicted the accused Rohit for the commission of offence punishable under Section 376 of IPC but acquitted the respondent Meera Tiwari for the offence punishable under Section 376 r/w 109 of IPC on the ground that it is not found proved beyond reasonable doubt that the respondent has abetted his son to commit rape on prosecutrix.

**4.** Learned counsel for the applicant has assailed the impugned judgment of acquittal on the ground that the trial Court passed the judgment of acquittal against the evidence on record and law applicable to the case. The prosecutrix is a minor girl. From the statement of prosecutrix and other witnesses examined by the prosecution it is established that at the time of commission of rape the respondent was present and she had aided her son. Ignoring these incriminating evidence the findings of acquittal recorded by the trial Court in favour of the respondent is erroneous and illegal. It is therefore, prayed that by allowing the petition the prosecution/State be granted leave to file appeal.

**5.** Considering the submission made by the learned counsel for the applicant and on perusal of the record it appears that prosecutrix and respondent are close relatives and neighbours. Respondent is mother of main accused Rohit

and also real aunt of prosecutrix. Prosecutrix (PW-3) deposed that first time on 15.11.2010 respondent called the prosecutrix in her house and asked to prepare tea. When prosecutrix was preparing tea in the kitchen the main accused Rohit came there and by disrobing her committed sexual intercourse with her. At this time the respondent was standing outside and she had closed the door of the room. After this the respondent and Rohit threatened her to kill her if she would inform anybody about this incident. Thereafter, during six months for many times the accused Rohit raped her with the help of respondent. Prosecutrix further stated that when her mother saw her with accused Rohit in compromising position she told her about entire incident.

**6.** The Prosecution has examined the parents of prosecutrix PW-4(mother), PW-7(father),sister in-law PW-9 and brother PW-8 to whom prosecutrix had narrated the incident. The father of prosecutrix PW-7 did not depose anything against respondent. He does not state that prosecutrix had told him or his wife that at the time of incident respondent was present, she had closed the door of the room and threatened her. The mother of prosecutrix PW-4 is declared hostile, in her examination in chief she does not say anything against respondent , in cross-examination she

deposed that "her daughter had told her that when she has called respondent to open the door, she did not open it"; but this fact is not stated by the witness in her police statement Ex.D-2. This is a material omission, therefore above statement cannot be relied upon. Other witness Savita (PW-9) turned hostile and not supported the prosecution. The brother Ranvir (PW-8) only states about presence of respondent at the time of fist incident. There is omission of this fact in his police statement Ex.D-3. These witnesses PW-4,7,8,9 did not depose that respondent had threatened the prosecutrix after the incident.

**7.** Thus from above discussions it appears that the evidence of prosecutrix showing involvement of respondent is not corroborated by her parents, brother and sister in-law to whom she has narrated the incident. The prosecutrix has lodged the report after delay of 6-months, only when she was caught with main accused in compromising position. The entire conduct of prosecutrix shows her as consenting party. Therefore sole testimony of prosecutrix against respondent Meera Tiwari can not be believed beyond reasonable doubt.

**8.** In order to prove Abatement of an offence it is necessary to prove that accused has instigated any person to do that offence or, intentionally aided, by any act or illegal

omission, the doing of that offence. Honble Apex Court in case law ***Ramesh Kumar v. state of Chattisgarh (2001)9 SCC 618 in para 20*** observed as under:-

*20. Instigation is to goad urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out.*

**9.** In the present case it is not proved beyond reasonable doubt that the respondent has instigated or intentionally aided the main accused Rohit to commit rape on prosecutrix. Since, the offence is committed in the house of respondent, therefore, presence of the respondent in the house is natural. There is no reliable evidence to show that the respondent was present at the time of incident or the main accused has committed rape in her presence and in this act the respondent was aiding him. When there is no evidence about commission of offence of abetment by instigation, mere presence of alleged abettor at or near the place of occurrence without awareness that an offence is being committed does not in itself amount to abetment by aid.

Some aid must be proved to have been given by the abettor to the principle in order to facilitate the commission of offence. Mere presence at the commission of crime is not enough to create criminal liability in the present circumstances of the case. Similarly mere failure to prevent the commission of offence is not by itself abetment.

**10.** Thus, the trial Court while appreciating the evidence adduced by the parties in the case rightly came to the conclusion that the alleged offence of abetment to commit rape is not found proved beyond reasonable doubt against the respondent. There is no illegality in the findings of the trial Court. the trial Court has rightly acquitted the respondent.

**11.** Therefore, it is not a fit case where leave to appeal can be granted to the complainant. Thus, the petition is hereby dismissed.

**12.** It is also made clear that the observation made by us in this petition shall not affect the merit of the prosecution case against main accused Rohit.

**(S.K. Gangele)**  
**Judge**

**(Anurag Shrivastava)**  
**Judge**